

06.02.2023
Court No.12
M/L. No. 3 & 4
Suvayan/
Sourav

**FMA 62 of 2023
With
CAN 1 of 2022
With
FMA 63 of 2023
With
CAN 1 of 2022**

**Sri Sri Academy & Ors.
Vs.
Shyam Agarwal & Ors.**

*Mr. Jayanta Mitra, Sr. Adv.
Mr. Saptansu Basu, Sr. Adv.
Mr. Arindam Guha
Mr. Shuvasish Sengupta
Ms. Arpita Dey*

...for the appellants.

*Mr. Arif Ali
Mr. Prabhat Kr. Srivastava
Mr. Supratik Ray*

...for the respondents.

Heard Mr. Mitra, learned Senior Counsel for the appellants and Mr. Arif Ali, learned Counsel for the respondents.

The appellants are the authorities of the School Administration and the respondents are the parents and guardians of the students studying in the school in question.

A suit was filed by the respondents impugning the rise in fee structure for every class starting from Nursery. The respondents also filed a petition under Order 39 Rules 1 and 2 CPC for injunction so far as collection of fees issued by circular dated 12th March,

2022 is concerned. On hearing the Counsel for the respondents/petitioners learned Trial Judge has passed *ad interim* injunction in favour of the plaintiffs/respondents restraining the present appellants/defendants not to give effect to the aforesaid circular dated 12th March, 2022.

Though, at the outset there are some dilemma as to whether the Court which passed the order is vacant or functional, we found from the website of the High Court that the Court is very much functional and Yasmin Fatma is the learned Judge sitting in Bench No. XII, City Civil Court, Calcutta.

It is also fairly submitted at the Bar that so far as FMA 62 of 2023 is concerned the suit has been fixed to 10th February, 2023 and so far as FMA 63 of 2023 is concerned the suit has been fixed to 16th February, 2023.

As both the matters are stated to be analogous by learned Counsel for the parties. We direct the learned Judge, Bench No. XII, City Civil Court, Calcutta to hear both the suits on the same day or if so advised or if it is felt convenient, both the suits may also be clubbed together after hearing learned Counsel for the parties for analogous hearing.

So far as the present application under Order 39 Rules 1 and 2 is concerned the present appellants,

who are defendants before the Court below have not yet filed their affidavit-in-opposition to the petition filed by the plaintiffs/respondents under Order 39 Rues 1 and 2 CPC.

The appellants/defendants are requested to file their affidavit-in-opposition in both the applications arising out of both the suits as aforesaid by 16th February, 2023. If for any cause not in control of the party the affidavit-in-opposition could not be filed by the date specified learned Court below shall have liberty to give another time of 7 days to them.

Whatever be the date of filing of the affidavit-in-opposition in applications arising out of both the suits, such applications shall be disposed of within 20 days from the date of filing of the affidavit-in-opposition positively after giving adequate opportunity of hearing to learned Counsel for both the parties.

It is made clear that learned Court below shall not be influenced by the orders passed by him which has been impugned in these appeals. Learned Court below is further directed to go into the merit of the controversy and answer all the points raised by learned Counsel for the parties objectively before reaching a conclusion on the applications in accordance with law.

With the aforementioned observation both the appeals being FMA 62 of 2023 along with interim application CAN 1 of 2022 and FMA 63 of 2023 along with interim application CAN 1 of 2022 are disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)